

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Allen Oil Company of Sylacauga, Inc.)

Allen Food Mart No. 15)

Alexander City, Tallapoosa Co., Alabama)

CONSENT ORDER

No. _____

PREAMBLE

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.); the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

STIPULATIONS

1. Allen Oil Company of Sylacauga, Inc. (hereinafter the "Permittee" or "Owner") is the registered owner of a regulated underground storage tank (hereinafter "UST") facility located at Allen Food Mart No. 15, 4880 Highway 280, Alexander City, Tallapoosa County, Alabama.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, §§ 22-22-1 to 22-22-14, Ala. Code (2006 Rplc. Vol.).

4. Inventory records indicate that product losses began on or about December 20, 2007.

5. In January, 2008, the owner discovered through inventory records a substantial amount of product loss. The owner notified the Department of the discovery of contaminated

soils, contaminated groundwater or free product as a liquid or vapor. The release was assigned UST Release Incident No. UST 08-01-01.

6. The Owner has violated Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.) by discharging pollution without a permit into a water of the state.

7. The Owner neither admits nor denies the allegations contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the alleged violations, the Owner consents to this Consent Order and agrees to abide by the terms herein.

8. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the allegations contained herein without the unwarranted expenditure of State resources in further enforcement actions.

CONTENTIONS

Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The violations consisted of unpermitted discharges which pose a potential threat to public health, safety and the environment.

B. Standard of Care:

The Owner failed to prevent an unpermitted discharge to the waters of the State of Alabama.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Permittee.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

The services of an environmental contractor were obtained to mitigate the environmental effects of the release to surface and groundwater.

E. History of Previous Violations:

The Owner/Permittee does not have a history of previous violations.

F. Ability to Pay:

The Owner/Permittee has alleged an inability to pay the civil penalty.

ORDER

Whereas the parties desire to resolve and settle the compliance issues cited above, the Department and the Owner consent to the terms and conditions of this Consent Order and agree as follows:

A. That, within forty-five days of the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of Ten Thousand Dollars for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Consent Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, if required by the Department based upon a review of a report of investigations and corrective actions performed to date, the owner shall undertake additional investigations and corrective actions and shall continue corrective actions until notified by the Department in writing that no further actions are required.

C. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

D. That, subject to the terms contained herein and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations alleged in this Consent Order.

E. That the Owner is not relieved from any liability upon the failure to comply with any provision of the Consent Order.

F. That, for purposes of this Consent Order only, the Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Owner shall be limited to the defenses of compliance with this Agreement, *Force Majeure*, and physical impossibility.

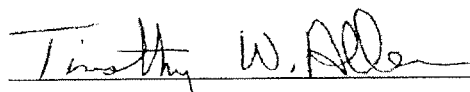
G. The Department and the Owner agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Owner shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such actions address new matters not raised in this Consent Order.

H. That this Consent Order shall not affect the Owner's obligation to comply with any Federal, State, or local laws or regulations.

I. That, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

J. That any modifications of this Consent Order must be agreed to in writing signed by both parties.

K. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Owner does hereby waive any hearing on the terms and conditions of same.


(Signature) Timothy W. Allen
(Please Print Name and Title of Authorized Officer)

Allen Oil Company of Sylacauga, Inc.

Dated: 11-13-09

Onis "Trey" Glenn, III,
Director

Dated: _____